

ESTATE OF MILTON JENKINS

: Order Docketing and Dismissing  
: Appeal as Premature  
:  
: Docket No. IBIA 96-2  
:  
: October 19, 1995

On October 12, 1995, the Board of Indian Appeals received a notice of appeal from Clara McKewan Jenkins (appellant), seeking review of a decision determining heirs in the estate of Milton Jenkins, IP AL 403L-92. The order was issued on August 31, 1995, by Administrative Law Judge Harvey C. Sweitzer.

This appeal is premature. Before seeking review by the Board, appellant must first seek rehearing from Judge Sweitzer, in accordance with 43 CFR 4.241(a) and the instructions given in Judge Sweitzer's decision.

It appears possible that, despite having captioned her filing "Notice of Appeal," appellant actually intended to file a petition for rehearing. Under 43 CFR 4.241(a), petitions for rehearing are properly filed with the Superintendent. Appellant sent or delivered her filing to the Uintah and Ouray Agency, Bureau of Indian Affairs, which received it on October 3, 1995. It appears that Agency personnel construed the filing as a notice of appeal to the Board--an understandable construction in light of the filing's caption--and transmitted it to the Board.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed and dismissed as premature. Appellant's filing is referred to Judge Sweitzer for a determination as to whether it is a timely filed petition for rehearing.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge